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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS DELGADO MORALES,

Defendant and Appellant.

E049728

(Super.Ct.No. INF060717)

OPINION

APPEAL from the Superior Court of Riverside County. Paul E. Zellerbach and Jorge C. Hernandez, Judges. Affirmed.

Anita P. Jog, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Dennis Delgado Morales pled guilty to false imprisonment, vehicle theft with a prior vehicle theft conviction, and being a felon in possession of a firearm. Defendant also admitted that he had suffered four prior prison terms. In return, the remaining allegations were dismissed, and defendant was sentenced

to the stipulated term of nine years four months in state prison with credit for time served. Defendant appeals from the judgment. We affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

An amended felony complaint was filed against defendant on March 12, 2008. The amended complaint was based on incidents that occurred on December 22, 2007. A preliminary hearing was held on March 12, 2008. Several witnesses offered testimony implicating defendant and two of his cohorts in committing a vehicle theft with the use of firearms at a used car dealership. After forcing the owner of the car dealership to sign over the pink slips to three vehicles, defendant and his two cohorts each took one vehicle from the car lot. They also kidnapped a woman who was in the office with the owner. One of the suspects eventually let the woman go.

Following the preliminary hearing, defendant was charged in an information with robbery (Pen. Code, § 211)¹ (count 1) with the personal use of a firearm (§ 12022.53, subd. (b)); kidnapping (§ 207, subd. (a)) (count 2); vehicle theft with a prior vehicle theft conviction (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5, subd. (a)) (count 3); and being a felon in possession of a firearm (§ 12021, subd. (a)(1)) (count 4). The information also alleged that defendant had sustained a prior strike conviction (§§ 667,

¹ All future statutory references are to the Penal Code unless otherwise stated.

subds. (c) & (e), 1170.12, subd. (c)(1)), a prior serious felony conviction (§ 667, subd. (a)), and four prior prison terms (§ 667.5, subd. (b)).

A jury trial commenced on December 16, 2008. On December 22, 2008, after four days of trial, the trial judge declared a mistrial on the court's own motion due to an unexpected "death in the [judge's] family."

On September 25, 2009, pursuant to a written plea agreement, defendant pled guilty to false imprisonment (§ 236), vehicle theft with a prior vehicle theft conviction, and felon in possession of a firearm. Defendant also admitted that he had suffered four prior prison terms. In return, the remaining allegations were dismissed, and defendant was promised a stipulated term of nine years four months with 972 days of credit for time served.

Defendant requested immediate sentencing, and on that same day, the court sentenced defendant to the agreed term of nine years four months in state prison. To reach the total term, the court imposed the aggravated term of four years on count 3, eight months (one-third the midterm of two years) on count 2, eight months (one-third the midterm of two years) on count 4, and one year each for the four prior prison terms. All other counts and allegations were dismissed and stricken pursuant to the plea agreement.

On November 6, 2009, defendant mailed a document entitled "Motion for Appeal Based on Ineffective Assistance of Counsel" from a penal institution. (Capitalization omitted.) The motion alleged that counsel failed to request a bail reduction hearing, failed to file a suppression motion, and failed to honor defendant's requests. The motion

was filed on November 25, 2009 and was treated as a notice of appeal by this court.

Defendant did not obtain a certificate of probable cause.

II

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his two-page supplemental letter brief, defendant generally contends that he received ineffective assistance of counsel, the trial court erred when it declared a mistrial “based on personal family issues,” he was not guilty of the false imprisonment charge and felt compelled to state he was guilty for that charge, and the trial court violated section 654. Defendant does not support his contentions with any argument or citations. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

“When a defendant pleads not guilty and is convicted as the result of a trial, in general any issue bearing on the determination of guilt and apparent from the record is cognizable on appeal. (See § 1237.) By contrast, when a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A

guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) In addition, “section 1237.5 authorizes an appeal [following a guilty plea] only as to a particular category of issues,” and to have these issues considered on appeal, a defendant must first take the additional procedural step of obtaining a certificate of probable cause. (*Id.* at p. 650.)

All of the issues raised in defendant’s notice of appeal and supplemental brief concern the determination of guilt or innocence or are not reviewable under section 1237.5. As set forth above, defendant did not request or obtain a certificate of probable cause. In the absence of a certificate of probable cause, we may not consider the validity of the plea; whether the change of plea was knowingly, intelligently, or voluntarily made; or whether defendant was deprived of effective assistance of counsel. (§ 1237.5; see also *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

We have now concluded our independent review of the record and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

McKINSTER
Acting P.J.

KING
J.